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No. 9726

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

SUN CHONG LEE alias Colonel Lee, *Appellant,* vs. UNITED STATES OF AMERICA, *Appellee.*	

APPELLANT'S REPLY BRIEF.

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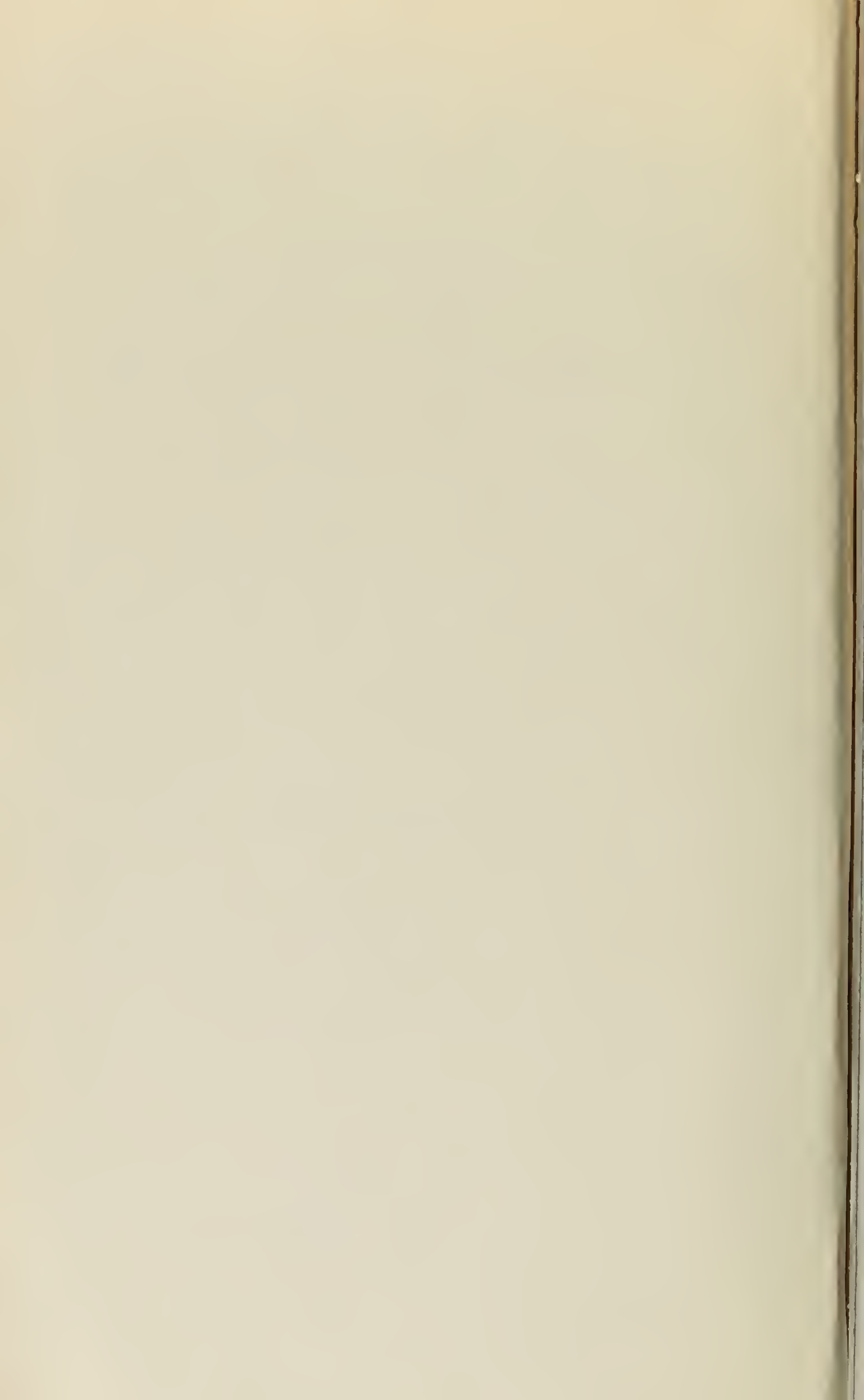

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Two questions were presented by the brief for appellant: (1) Did count one of the indictment fail to charge an offense under section 3 of the White Slave Traffic Act (18 U.S.C., sec. 399) in that it omitted to allege that transportation was upon the line or route of a common carrier? (2) Is the White Slave Traffic Act applicable to the Territory of Hawaii?

In answer to the first question the appellee admits that count one of the indictment did not directly allege that transportation was upon the line or route of a common carrier. (Brief for Appellee, p. 9.) The appellee argues, however, that the allegation in count one that transportation was upon the Inter-Island Airways Ltd. was an indirect allegation that transportation was upon the line or route of a common carrier. (Brief for Appellee, p. 11.) And appellee

thereupon invokes section 556, Title 18, United States Code, which provides that no indictment shall be deemed insufficient "by reason of any defect or imperfection in matter of form only". (Brief for Appellee, p. 9.)

A plain reading of said section 3 of the White Slave Traffic Act (18 U.S.C., sec. 399) makes it evident that transportation upon the line or route of a common carrier is an essential element of the offense denounced by the section. The cases cited at page 7 of the Brief for Appellant eliminate all doubt on the subject.

An indictment must charge each and every element of an offense.

> *United States v. Standard Brewery,* 251 U.S. 210, 220, 64 L.Ed. 229, 40 S.Ct. 139;
>
> *Evans v. United States,* 153 U.S. 584, 587, 38 L.Ed. 830, 14 S.Ct. 934.

The omission of any essential element of an offense cannot be supplied by intendment or implication or indirection or inference.

> *Pettibone v. United States,* 148 U.S. 197, 37 L.Ed. 419, 13 S.Ct. 542, 545;
>
> *United States v. Hess,* 124 U.S. 433, 31 L.Ed. 516, 8 S.Ct. 571, 574.

Such omission is a matter of substance, and not a "defect or imperfection in matter of form only" within the meaning of section 1025 of the Revised Statutes. (18 U.S.C., sec. 556.)

> *United States v. Carll,* 105 U.S. 611, 613, 26 L.Ed. 1135.

Such omission cannot be aided or cured by the verdict.

United States v. Hess, 124 U.S. 483, 31 L.Ed. 516, 8 S.Ct. 571, 574;

Harris v. United States, C.C.A.Mo. 1939, 104 F. 2d 41.

Appellee's answer to the question is insufficient; and it is manifest that the first count in the indictment was insufficient to allege a violation of said section 3 or to sustain the conviction thereunder.

In answer to the second question the appellee points out that *Alaska* was not a Territory when the White Slave Traffic Act was enacted in 1910. (Brief for Appellee, p. 12.) This must be conceded as a matter of history for *Alaska* was not formally organized as a Territory until August 24, 1912. But the question before the court is one of statutory construction and not of history. The meaning of "Territory" as used in the act is defined by section 7 of the act. (18 U.S.C., sec. 403.) That definition does not *include* the Territory of Hawaii. Therefore, the White Slave Traffic Act is not applicable to the Territory of Hawaii.

For the several reasons appearing in the Brief for Appellant and herein supplemented, it is again respectfully submitted that the judgment should be reversed as to each count.

Dated, San Francisco, California,
September 5, 1941.

E. J. Botts,
Herbert Chamberlin,
Attorneys for Appellant.